Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 26 FEBRUARY 19, 1992 No. 8

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The decisions, rulings, notices, and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

19 CFR Part 101

(T.D. 92–10)

CUSTOMS SERVICE FIELD ORGANIZATION:
PORT HUENEME, CALIFORNIA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of the Customs Service by designating Port Hueneme as a port of entry in the Customs District of Los Angeles, California, of the Pacific Region. The change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: February 7, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control (202–566–8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs published a notice in the Federal Register on November 1, 1991 (56 FR 56179) proposing to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3 and 101.4) by designating Port Hueneme, California, as a port of entry for Customs purposes in the Customs District of Los Angeles, California, within the Pacific Region. Port Hueneme has been listed in § 101.4(c), Customs Regulations, as a Customs station within the Los Angeles District.

Two comments were received in response to the notice, both of which strongly supported the proposed designation of Port Hueneme as a port of entry. After a further review of this matter, Customs has determined

to adopt the proposal as described in the notice. The list of Customs regions, districts and ports of entry in § 101.3(b), Customs Regulations, and the list of Customs stations in § 101.4(c), Customs Regulations, are amended accordingly.

GEOGRAPHICAL DESCRIPTION

The geographical limits of the port of entry of Port Hueneme are as follows:

> In Ventura County, California, beginning at the northwest corner of Rancho El Rio De Santa Clara O La Colonia and proceeding east along the Santa Clara River to the City of Fillmore and including the Fillmore city limits, and then from the City of Fillmore south on Highway 23 to the City of Thousand Oaks and including the Thousand Oaks city limits, and then from the City of Thousand Oaks south on Highway 23 to the Ventura County/Los Angeles County line, and then southwest along the Ventura County/Los Angeles County line to a point directly east of Point Mugu, and then directly west to Point Mugu, and then from Point Mugu west along the coastline to the point of beginning.

AUTHORITY

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

INAPPLICABILITY OF DELAYED EFFECTIVE DATE REQUIREMENTS

Because the amendments contained in this document concern agency management and will provide presently needed benefits to the general public, pursuant to 5 U.S.C. 553(a)(2) and (d)(3), a delayed effective date is neither required nor appropriate.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12291

Although Customs solicited public comments, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553 because this matter relates to agency management and organization, and for this reason this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, because it relates to agency management and organization, this document is not subject to E.O. 12291.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspections, Exports, Imports, Organization and functions (Government agencies).

AMENDMENTS TO THE REGULATIONS

Part 101, Customs Regulations (19 CFR 101) is amended as set forth below.

PART 101 – GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by inserting in appropriate alphabetical order "Port Hueneme, Calif. (T.D. 92–10)" in the column headed "Ports of entry" in the Los Angeles, California, District of the Pacific Region.

3. The list of Customs stations in § 101.4(c) is amended by removing the entry "Los Angeles, Calif." in the column headed "District", by removing the entry "Port Hueneme, Calif." in the column headed "Customs stations", and by removing the entry "Los Angeles" in the column headed "Port of entry having supervision".

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: January 24, 1992.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, February 7, 1992 (57 FR 4717)]

(T.D. 92–11)

EXTENSION OF OILTEST, INC.'S CUSTOMS APPROVAL AND ACCREDITATIONS TO INCLUDE A NEW FACILITY AND ADDITIONAL ANALYSES PERFORMED AT A PREVIOUSLY ACCREDITED SITE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Oiltest, Inc.'s Customs approval and accreditations to include additional testing performed at a previously accredited site and gauging and laboratory testing performed at a new facility.

SUMMARY: Oiltest, Inc., of Roselle, New Jersey, a Customs accredited commercial laboratory and approved gauger under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its commercial laboratory accreditations to include the following analyses at its Roselle, New Jersey facility: Reid Vapor Pressure, Saybolt Universal Viscosity, percent by weight sulfur of petroleum products and percent by weight lead in gasoline. Further, the company's Thorofare, New Jersey facility has been given approval to perform the gauging of petroleum and petroleum products, organic chemicals in bulk and in liquid

form and vegetable oils. Additionally, Oiltest's Thorofare facility has also been accredited to perform the following analyses: API Gravity, sediment and water, Reid Vapor Pressure and percent by weight sulfur in petroleum products.

SUPPLEMENTARY INFORMATION:

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Oiltest, Inc., which holds Customs accreditation in certain laboratory analyses and approval to gauge certain products, has applied to Customs to extend its laboratory accreditation and gauging approval in the manner described above. Review of Oiltest, Inc.'s qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, D.C. 20229 (202–566–2446).

Dated: February 4, 1992.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, February 7, 1992 (57 FR 4791)]

(T.D. 92–12)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JANUARY 1992

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign countries shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holidays: Wednesday, January 1, and Monday, January 20, 1992.

Greece drachma:

January 2, 1992	$0.005661
January 3, 1992	.005601
January 6, 1992	.005700
January 7, 1992	.005677

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for January 1992 (continued):

Greece drachma (continued):

January 8, 1992	$0.005706
January 9, 1992	.005602
January 10, 1992	.005478
January 13, 1992	.005511
January 14, 1992	.005467
January 15, 1992	.005353
January 16, 1992	.005342
January 17, 1992	.005389
January 21, 1992	.005457
January 22, 1992	.005456
January 23, 1992	.005422
January 24, 1992	.005456
January 27, 1992	.005355
January 28, 1992	.005410
January 29, 1992	.005430
January 30, 1992	.005319
January 31, 1992	.005384

South Korea won:

January 2, 1992	$0.001307
January 3, 1992	.001307
January 6, 1992	.001310
January 7, 1992	.001309
January 8, 1992	.001306
January 9, 1992	.001305
January 10, 1992	.001304
January 13, 1992	.001304
January 14, 1992	.001303
January 15, 1992	.001303
January 16, 1992	.001303
January 17, 1992	.001302
January 21, 1992	.001302
January 22, 1992	.001301
January 23, 1992	.001300
January 24, 1992	.001300
January 27, 1992	.001300
January 28, 1992	.001300
January 29, 1992	.001302
January 30, 1992	.001304
January 31, 1992	.001305

Taiwan N.T. dollar:

January 2, 1992	N/A
January 3, 1992	N/A
January 6, 1992	$0.039200
January 7, 1992	.039761
January 8, 1992	.039598
January 9, 1992	.039785
January 10, 1992	.039589
January 13, 1992	.039639
January 14, 1992	.039667
January 15, 1992	.039690
January 16, 1992	.039719
January 17, 1992	.039702

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for January 1992 (continued):

Taiwan N.T. dollar (continued):

January 21, 1992	$0.039785
January 22, 1992	.039794
January 23, 1992	.039785
January 24, 1992	.039871
January 27, 1992	.039976
January 28, 1992	.040000
January 29, 1992	.039992
January 30, 1992	.039984
January 31, 1992	.039944

(LIQ–03–01 S:NISD CIE)

Dated: February 2, 1992.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 92–13)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JANUARY 1992

The follow rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 92–1 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Holidays: Wednesday, January 1, and Monday, January 20, 1992.

Austria schilling:

January 15, 1992	$0.087681
January 16, 1992	.087835
January 17, 1992	.088417
January 27, 1992	.088067
January 30, 1992	.087642
January 31, 1992	.088456

Belgium franc:

January 15, 1992	$0.029958
January 16, 1992	.030012
January 17, 1992	.030221
January 27, 1992	.030048
January 30, 1992	.029949
January 31, 1992	.030221

FOREIGN CURRENCIES – Variances from quarterly rates for January 1992 (continued):

Denmark krone:

January 15, 1992	$0.159210
January 16, 1992	.159286
January 27, 1992	.159655
January 30, 1992	.159172

Finland markka:

January 15, 1992	$0.226603
January 16, 1992	.226757
January 17, 1992	.228258
January 27, 1992	.227402
January 30, 1992	.226244
January 31, 1992	.228493

France franc:

January 15, 1992	$0.180734
January 16, 1992	.181242
January 27, 1992	.181686
January 30, 1992	.180571

Germany deutsche mark:

January 15, 1992	$0.616713
January 16, 1992	.618047
January 17, 1992	.622084
January 27, 1992	.618620
January 30, 1992	.616523
January 31, 1992	.622084

Ireland pound:

January 15, 1992	$1.644000
January 16, 1992	1.642500
January 27, 1992	1.650000
January 30, 1992	1.646000

Italy lira:

January 15, 1992	$0.000818
January 16, 1992	.000820
January 30, 1992	.000820

Netherlands guilder:

January 15, 1992	$0.547705
January 16, 1992	.548637
January 17, 1992	.552425
January 27, 1992	.549420
January 30, 1992	.547585
January 31, 1992	.552639

Norway krone:

January 15, 1992	$0.156961
January 16, 1992	.157134
January 27, 1992	.157803
January 30, 1992	.157418

FOREIGN CURRENCIES—Variances from quarterly rates for January 1992 (continued):

Spain pesata:

January 15, 1992	$0.009704
January 16, 1992	.009713
January 30, 1992	.009778

Sri Lanka rupee:

January 2, 1992	N/A
January 6, 1992	N/A
January 7, 1992	N/A
January 10, 1992	N/A
January 13, 1992	N/A
January 15, 1992	N/A
January 16, 1992	N/A
January 27, 1992	N/A
January 28, 1992	N/A
January 29, 1992	N/A
January 30, 1992	N/A
January 31, 1992	N/A

Sweden krona:

January 15, 1992	$0.169492
January 16, 1992	.169621
January 27, 1992	.170410
January 30, 1992	.170010

Switzerland franc:

January 15, 1992	$0.692665
January 16, 1992	.695894
January 27, 1992	.695652
January 30, 1992	.693481

United Kingdom pound:

January 15, 1992	$1.753000
January 16, 1992	1.760500
January 30, 1992	1.773000

(LIQ–03–01 S:NISD CIE)

Dated: February 2, 1992.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 3–1992)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of December 1991 follow. The last notice was published in the CUSTOMS BULLETIN on January 29, 1992.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, Room 2104, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 566–6956.

Dated: February 4, 1992.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

REC#			EFF DT	EXP DT	NAME OF COP, TMK, TNM OR
COP	91	00324	19911214	20111214	PIN BOT NES
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	91	00332	19911216	20111216	MANEATER SERIES SHARK WITH
	91	00333	19911216	20111216	MANEATER SERIES SHARK WITH
	91	00334	19911216	20111216	POND PALS SERIES - FROG
	91	00335	19911216	20111216	POND PALS SERIES - LADYBUG
	91	00336	19911216	20111216	POND PALS SERIES - BUTTERF
	91	00337	19911216	20111216	ZANY ZOO SERIES - ELEPHANT
	91	00338	19911216	20111216	ZANY ZOO SERIES - COW
	91	00339	19911216	20111216	ZANY ZOO SERIES - BEAR
	91	00340	19911216	20111216	ZANY ZOO SERIES SHARK WALK
	91	00341	19911227	20081227	MODEL "5230"
	91	00342	19911218	20111218	ATX-FO-055
	91	00343	19911218	20111218	HOPPER GUN PACKAGE
	91	00344	19911218	20111218	OPERATING INSTRUCTIONS
	91	00345	19911218	20111218	#6789 PUPPY LOVES
	91	00346	19911218	20111218	B/O SPIDER
	91	00347	19911218	20111218	B/O CRAB
	91	00348	19911219	20111219	OPEN HEART HALE WAND
	91	00349	19911219	20111219	SOLID HEART HALO WAND
	91	00350	19911219	20111219	HOLIDAY HALO WAND
	91	00351	19911219	20111219	SMALL STAR HALO WAND
	91	00352	19911219	20111219	BIG STAR HALO WAND
	91	00353	19911219	20111219	MUSICAL NOTE HALO WAND
	91	00354	19911219	20111219	ANGEL HALO WAND
	91	00355	19911219	20111219	HOLIDAY HALO
	91	00356	19911219	20111219	MUSICAL NOTE HALO
	91	00357	19911219	20111219	SMALL STAR HALO
	91	00358	19911219	20111219	ANGEL HALO
	91	00359	19911219	20111219	SOLID HEART HALO
	91	00360	19911219	20111219	SHAMROCK HALO
	91	00361	19911228	20111228	SUPER SOAKER 50
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	91	00634	19911209	19960808	BETTER HOME & GARDENS
	91	00635	19911211	20021214	ATO
	91	00636	19911211	20000102	NAC SAC
	91	00637	19911211	20090620	TRUE COLORS

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N DECEMBER 1991

PAGE 1
DETAIL

MSK	OWNER NAME	RESTRCTD
	WILLIAMS ELECTRONICS GAMES, INC.	N
	WILLIAMS ELECTRONICS GAMES, INC.	N
	NINTENDO OF AMERICA INC.	N
	SQUARE CO., LTD.	N
	NINTENDO OF AMERIC INC.	N
	NINTENDO OF AMERICAN INC.	N
	NINTENDO OF AMERICAN INC.	N
	ACE NOVELTY CO., INC.	N
TH DIVING MASK	LA FANTAISIE INTERNATIONAL CORP.	N
TH LIFE PRESERVE	LA FANTAISIE INTERNATIONAL CORP.	N
	LA FANTAISIE INTERNATIONAL CORP.	N
UG	LA FANTAISIE INTERNATIONAL CORP.	N
RFLY	LA FANTAISIE INTERNATIONAL CORP.	N
NT	LA FANTAISIE INTERNATIONAL CORP.	N
	LA FANTAISIE INTERNATIONAL CORP.	N
	LA FANTAISIE INTERNATIONAL CORP.	N
LKMAN	LA FANTAISIE INTERNATIONAL CORP.	N
	NULCO MANUFACTURING CORPORATION	N
	AMERITEX, INC.	N
	TRADE ASSOCIATES, INC.	N
	TRADE ASSOCIATES, INC.	N
	HONG KONG CITY TOY FACTORY LTD.	N
	IHAYA CORPORATION	N
	IHAYA CORPORATION	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	ACE NOVELTY CO., INC.	N
	LARAMI CORPORATION	N
	RARE LTD.	N
	KOBRA INTERNATIONAL, LTD.	Y
	KOBRA INTERNATIONAL, LTD.	Y
	REMINGTON PRODUCTS, INC.	Y
	MEREDITH CORPORATION	N
	LITTLEFUSE, INC.	N
	RICHARD LEEDS INTERNATIONAL, INC	N
	RICHARD LEEDS INTERNATIONAL	N

REC#			EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK
TMK	91	00638	19911211	20001218	NIGHT GEAR WITH DESIGN
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	91	00640	19911213	20000910	BENETTON FORMULA
	91	00641	19911214	20061118	WONDER DOG
	91	00642	19911214	20010316	SONOID
	91	00643	19911214	20000529	DETROIT PISTONS AND DESIGN
	91	00644	19911214	20001113	NBA LOGO WITH DESIGN
	91	00645	19911214	20000814	NBA LOGO WITH DESIGN
	91	00646	19911214	20090321	CHICAGO BULLS AND DESIGN
	91	00647	19911214	20090221	NBA LOGO WITH DESIGN
	91	00648	19911216	20010921	BLACK FRUSTO-CONICAL TOP
	91	00649	19911216	20090509	COTTON SPIRIT
	91	00650	19911216	20000522	ENERGIE BI CURRANTS
	91	00651	19911216	20000306	CURRANTS
	91	00652	19911217	19970518	MATHEY-TISSOT & DESIGN
	91	00653	19911218	19940716	QUEEN HELENE
	91	00654	19911218	20010115	ROYALTY COLLECTION
	91	00655	19911218	20040626	CONCO
	91	'00656	19911218	20010129	OVERTIME
	91	00657	19911218	20011008	PEARL RIVER BRIDGE WITH DESIGN
	91	00658	19911218	20030906	RELASKOP
	91	00659	19911218	20000925	SPRING SHADES
	91	00660	19911218	20010730	EYE-SEE AND DESIGN
	91	00661	19911218	20000220	GOLDEN KROWN
	91	00662	19911218	20040526	GOLD TOE
	91	00663	19911218	20010625	DRAGON BREED
	91	00664	19911218	20010625	MODULAR COMPUTER SYSTEMS, INC.
	91	00665	19911218	20010423	ANZA
	91	00666	19911218	20010402	MERCY'S & DESIGN
	91	00667	19911218	20000613	JEEP
	91	00668	19911218	20000108	JEEP
	91	00669	19911218	20000129	JEEP
	91	00670	19911218	20030503	JEEP
	91	00671	19911220	20070825	OBSESSION
	91	00672	19911220	20050709	OBSESSION
	91	00673	19911220	20090221	OBSESSION STYLIZED
	91	00674	19911220	20000710	ETERNITY
	91	00675	19911220	20010409	ETERNITY STYLIZED
	91	00676	19911220	20000828	ETERNITY
	91	00677	19911228	20060602	NIKE & SWOOSH DESIGN
	91	00678	19911228	20081011	AIR MAX
	91	00679	19911228	20090926	BASKETBALL PLAYER DESIGN
	91	00680	19911228	19991212	NIKE AIR & SWOOSH DESIGN
	91	00681	19911228	20000320	NIKE & SWOOSH DESIGN
	91	00682	19911228	20000508	NIKE & SWOOSH DESIGN
	91	00683	19911228	20000417	SIDE 1
	91	00684	19911228	20051112	AIR JORDAN
	91	00685	19911228	20061104	NIKE & SWOOSH DESIGN
	91	00686	19911228	20041127	NIKE AIR

	OWNER NAME	RESTRCTD
	RICHARD LEEDS INTERNATIONAL	N
	MINISTRY OF COMMERCE & INDUSTRY	N
	BENETTON GROUP S.P.A.	N
	JOHN S. WHANG, DBA S.H. TRADING	Y
	AMERICAN MESSAGE SALE & MFG. CO.	N
	DETROIT PISTON BASKETBALL CO.	Y
	NBA PROPERTIES INC.	Y
	NBA PROPERTIES INC.	Y
	CHICAGO PROFESSIONAL SPORTS	Y
	NBA PROPERTIES, INC.	Y
	A.T.X. INTERNATIONAL, INC.	N
	JERI-JO KNITWEAR, INC.	Y
	JERI-JO KNITWEAR, INC.	Y
	JERI-JO KNITWEAR, INC.	Y
	MATHEY TISSOT INTERNATIONAL	Y
	PARA LABORATORIES, INC.	N
	HAYWIN TEXTILE PRODUCTS, INC.	Y
	CONCO SYSTEMS INC.	N
	RO-RO ENTERPRISES, INC.	Y
	CHINA NATIONAL CEREALS, ETC.	N
	FEINMECHANISCHE-OPTISCHE BETRIEB	N
	POSITPLUS, INC.	Y
	CLYDE POLLOCK	Y
	CASA HASNA, INC.	N
	GAKM ENTERPRISES, INC.	Y
	IREM AMERICA CORPORATION	N
	MODULAR COMPUTER SYSTEMS, INC.	N
	ANZA INTERNATIONAL AB	N
	BLANCO FASHIONS, INC.	Y
	CHRYSLER CORPORATION	N
	CHRYSLER CORPORATION	N
	CHRYSLER CORPORATION	N
	CHRYSLER CORPORATION	N
	CALVIN KLEIN COSMETIC CORP.	N
	CALVIN KLEIN COSMETIC CORP.	Y
	CALVIN KLEIN COSMETIC CORP.	N
	CALVIN KLEIN COSMETIC CORP.	Y
	CALVIN KLEIN COSMETICS CORP.	N
	CALVIN KLEIN COSMETICS CORP	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N

01/21/92 U.S. CUSTOMS SERV
10:20:36 IPR RECORDATIONS ADDED IN

REC#			EFF DT	EXP DT	NAME OF COP, TMK, TNM OR N
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	91	00688	19911228	20020706	SWOOSH
	91	00689	19911228	20010113	AIR-SOLE
	91	00690	19911228	20051112	PIERRE NICOL

SUBTOTAL RECORDATION TYPE 60

TOTAL RECORDATIONS ADDED THIS MONTH 99

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DETAIL

MSK	OWNER NAME	RESTRCTD
	NIKE, INC.	N
	NIKE, INC.	N
	NIKE, INC.	N
	TAXOR, INC.	Y

APPLICABILITY OF RECENT COURT OF INTERNATIONAL TRADE CASE

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUBJECT: Recent court case *Orbisphere Corp. v. United States.*

SUMMARY: This Notice is published to express the views of the Customs Service on the decision in *Orbisphere Corp. v. United States*, 726 F.Supp 1344, 13 CIT 866 (1989), *after remand to Customs*, 765 F. Supp. 1087, Slip Op. 91–39 (May 14, 1991), *entry of judgment after second remand*, Slip Op. 91–69 (August 9, 1991).

This case involved merchandise manufactured in a foreign country by an Orbisphere company and sold to ultimate purchasers in the United States by an Orbisphere sales office in the United States that was a related party to the manufacturer. The Court of International Trade found that the relationship of the sales office to the manufacturer was that of a selling agent. 13 CIT at 876. The Court also found that the sales "were consummated within the United States." 13 CIT at 885. The Court ruled that this latter finding precluded appraisement under transaction value, because a sale within the United States could not be a sale "for exportation to the United States" within the meaning of 19 U.S.C. § 1401a(b)(1). 13 CIT at 875, 884. The goods were ultimately appraised under Deductive Value, 19 U.S.C. § 1401a(d).

In the Customs Service's view, the situs of a sale is not relevant to the determination of whether merchandise is "sold for exportation to the United States" within the meaning of 19 U.S.C. § 1401a(b)(1). Therefore, regardless of the relationships between or among the parties to the transaction, the fact that a sale is consummated in the United States will not in itself preclude appraisement under Transaction Value.

Notwithstanding the decision in *Orbisphere*, the Customs Service will continue to regard transactions in which a selling agent participates as a sale from the agent's principal, the seller, to the ultimate purchaser because by definition, a selling agent is an agent for a seller. Merchandise will be appraised accordingly. In this regard, it is noted that if the merchandise is subject to appraisement under Transaction Value, subsection (B) of § 1401a(b)(1) requires that an amount be added for "any selling commission incurred by the buyer with respect to the imported merchandise."

Dated: January 27, 1992.

SAMUEL H. BANKS,
Assistant Commissioner,
Commercial Operations.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 92–5)

MINEBEA CO., LTD. AND NMB CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, TORRINGTON CO., DEFENDANT-INTERVENOR

Court No. 89–06–00344

Plaintiffs challenge the determination by the Department of Commerce that defendant-intervenor's antidumping duty petition was filed "on behalf of" the domestic spherical plain bearings industry, and that rod end bearings are within the scope of the investigations.

Held: The determination by the Department of Commerce that the petition was filed on behalf of the spherical plain bearings industry and the decision to include rod end bearings within the scope of the investigations were both supported by substantial evidence and were otherwise in accordance with law.

[ITA determination as to standing and scope is affirmed.]

(Dated January 29, 1992)

Tanaka, Ritger & Middleton (*Michele N. Tanaka, Alice L. Mattice* and *Michael J. Brown*) for plaintiffs.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Jeanne E. Davidson*); of counsel: *John D. McInerney*, Senior Counsel, *Douglas S. Cohen, Craig R. Giesse, Diane M. McDevitt, Stephanie J. Mitchell* and *Maria Solomon*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, Department of Commerce, for defendant.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr.* and *William A. Fennell*) for defendant-intervenor.

OPINION

TSOUCALAS, *Judge:* Plaintiffs, Minebea Co., Ltd and NMB Corporation (collectively "Minebea"), move pursuant to Rule 56.1 of the Rules of this Court for judgment upon the agency record of the Department of Commerce, International Trade Administration ("Commerce" or "ITA"), in *Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan*, 54 Fed. Reg. 19,101 (1989). Specifically, Minebea contests the finding by the ITA that petitioner, the Torrington Company ("Torrington"), had standing to file an antidumping petition on behalf of the domestic manufacturers of spherical plain bearings, and the finding that rod ends manufactured by plaintiffs were within the scope of the investigations.

The facts of this case have been recounted in detail in several related cases, including *NTN Bearing Corp. of America v. United States*, 15 CIT

____, 757 F. Supp. 1425 (1991), and *SKF USA, Inc. v. United States Dep't of Commerce*, 15 CIT ____, 762 F. Supp. 344 (1991). Briefly, the ITA determined that Torrington's petition, dated March 31, 1988, was filed on behalf of the domestic American industries which manufacture ball bearings, spherical roller bearings, cylindrical roller bearings, needle roller bearings and spherical plain bearings, and an investigation of imports of those bearings ensued. *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* ("Final Determinations"), 54 Fed. Reg. 18,992, 19,006 (1989). The ITA also determined that rod ends, a product manufactured by Minebea, are a type of plain bearing subject to the investigation. *Id.* at 19,010.

DISCUSSION

A final determination by the Department of Commerce will be affirmed unless that determination is not supported by substantial evidence or is otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States*, 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988).

Under this standard, Commerce is granted considerable deference "in both its interpretation of its statutory mandate and the methods it employs in administering the antidumping law." *Chemical Prods. Corp. v. United States*, 10 CIT 626, 628, 645 F. Supp. 289, 291 (1986) (citations omitted). Where Commerce is faced with two reasonable alternatives, the Court will not impose its preference, provided the alternative selected by the ITA is supported by substantial evidence in the administrative record. *Torrington Co. v. United States*, 14 CIT ____, 745 F. Supp. 718, 723 (1990), *aff'd*, 938 F.2d 1276 (Fed. Cir. 1991).

I. *Standing:*

Minebea challenges the determination by Commerce that Torrington had standing to file an antidumping petition on behalf of the domestic industry which produces spherical plain bearings. Plaintiffs contend that the ITA did not base its analysis on sufficient data and should have relied upon data collected by the International Trade Commission ("ITC") in its injury determination.

The statutory requirements for initiation of an antidumping proceeding by petition are that "an interested party * * * files a petition with the administering authority, on behalf of an industry which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations." 19 U.S.C. § 1673a(b)(1) (1988). It is for Commerce to determine whether those requirements have been met, and the ITA has broad discretion in reaching its decision. *NTN Bearing*, 15 CIT at ____, 757 F. Supp. at 1429.

Minebea faults the ITA's determination because it lacks figures on total United States production of spherical plain bearings and thus any decision regarding standing is grounded in ignorance. *Plaintiffs' Memorandum in Support of Motion for Judgment Upon the Agency Record Pursuant to USCIT R. 56.1* at 15. The ITA's policy is to presume standing unless a majority of the domestic industry affirmatively opposes the petition. This presumption was affirmed in *NTN Bearing*. 15 CIT at ____, 757 F. Supp. at 1429. *See also Comeau Seafoods Ltd. v. United States*, 13 CIT 923, 927, 724 F. Supp. 1407, 1411 (1989). The only domestic manufacturer of spherical plain bearings to oppose Torrington's standing was New Hampshire Ball Bearings ("NHBB"), a subsidiary of Minebea. Administrative Record ("AR") (Pub.) Doc. 58. However, NHBB provided no information as to its share of the domestic market, and thus the ITA found that the presumption in favor of standing was not rebutted. This conclusion was reasonable and comported with the law.

In *NTN Bearing*, the court affirmed Commerce's conclusion that petitioner herein possessed standing with regard to ball bearings, spherical roller bearings, cylindrical roller bearings, needle roller bearings and spherical plain bearings. 15 CIT at ____, 757 F. Supp. at 1431. Concerning the challenge to Torrington's standing in the spherical plain bearings industry, the Court adheres to its opinion in *NTN Bearing*, and finds that Commerce properly determined that petitioner possessed standing to file an antidumping petition on behalf of that domestic industry.

Additionally, the Court notes that it is the responsibility of the ITA to determine standing by its own standards and no statute or regulation requires that, in making that finding, the ITA must defer to data used by the ITC. 19 U.S.C. § 1673a(c) (1988). Accordingly, the determination by the ITA that Torrington possessed standing to file the petition is affirmed.

II. *Scope:*

Minebea also challenges the ITA's conclusion that rod ends and rod end bearings are within the spherical plain bearings class of antifriction bearings. First, plaintiffs assert that rod ends without rolling elements were not specifically named in the petition and therefore should have been excluded from the scope of the investigations. Alternatively, plaintiffs claim that such rod ends should have been excluded because they are airframe components unrelated to the reduction of friction, a group which the ITA specifically excluded from the investigations.

This court has recognized that Commerce retains broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition. *Mitsubishi Elec. Corp. v. United States*, 12 CIT 1025, 1042, 700 F. Supp. 538, 552 (1988), *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990); *see also Gold Star Co. v. United States*, 12 CIT 707, 709, 692 F. Supp. 1382, 1384 (1988), *aff'd sub nom., Samsung Elec. Co. v. United States*, 873 F.2d 1427 (Fed. Cir. 1989). That discre-

tion must be exercised reasonably and any consequent determination must be supported by substantial evidence in the administrative record. *American Lamb Co. v. United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986); *Gold Star*, 12 CIT at 708, 692 F. Supp. at 1383.

When a question arises as to whether a particular product is within the scope of an *investigation*, the ITA first must determine whether the petition covers that product. If the petition is ambiguous, Commerce then examines additional documentary evidence. If the scope is still unclear, Commerce looks to other criteria, including the factors enumerated in *Diversified Prods. Corp. v. United States*, 6 CIT 155, 162, 572 F. Supp. 883, 889 (1983).[1] *See Final Determinations*, 54 Fed. Reg. at 19,007.

The question here is whether rod ends and rod end bearings were properly included in the investigations. Minebea contends that those products are "airframe components which are obviously unrelated to the reduction of friction," which Commerce specifically excluded from the investigations. AR (Pub.) Doc. 72 at 3. Torrington's petition, normally the first point of reference, contains scant reference to rod ends, *per se*. However, following initiation of the investigation, Minebea requested that the ITA exclude "rod end/spherical plain bearings" from the investigations. AR (Pub.) Doc. 58. The ITA denied the request and issued a decision memorandum on June 13, 1988, less than three months after Torrington's petition was filed, which clarified Commerce's conviction that "[r]od ends and rod end bearings, which some parties have referred to as aircraft components, *are* subject to these investigations." AR (Pub.) Doc. 72 at 3 (emphasis in original). Minebea continues to claim that rod ends are not a type of spherical plain bearing because of their physical and functional distinctions, and hence they should have been excluded from the investigations.[2]

The ITA's decision to investigate imports of rod ends and rod end bearings was based on the fact that the petition specifically included spherical plain bearings and housed bearing units. AR (Pub.) Doc. 1 at 13–15. The petition also explicitly cited bearings used in aviation and aerospace applications. *Id.* at 4. Furthermore, Exhibit 4 to the petition classified aircraft control and rod end bearings as among the products manufactured by Torrington which were to be investigated. Lastly, Exhibit 34 also described rod ends and rod end bearings as mounted bearing units of the type which fall within the ambit of the petition.

The petition clearly included spherical plain bearings and housed bearing units in its listing of products to be investigated. Moreover, rod

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[1] These factors include the general physical characteristics of the merchandise, the expectations of the ultimate purchasers, channels of trade in which the goods travel, the ultimate use of the product, and its cost or manner of advertising or display. *Id. See also Kyowa Gas Chem. Indus. Co. v. United States*, 7 CIT 138, 140, 582 F. Supp. 887, 889 (1984). These criteria are codified at 19 U.S.C. § 1677j(d)(1) for determinations concerning whether later developed merchandise is within the scope of an antidumping duty *order*.

[2] Minebea's argument that rod ends should be excluded because their coefficient of friction is higher than that of other antifriction bearings is ill-founded. The investigations were never limited on that basis, and the Court sees no reason to impose such a limitation now. Rod ends and rod end bearings may not deter friction as efficiently as other bearings, but their function is nonetheless related to the reduction of friction.

ends and rod end bearings are used in aerospace applications, an area of interest expressly mentioned in the petition. Finally, petitioner's submissions after initiation of the investigations, which were made in response to ITA requests to clarify the scope of the petition, unequivocally indicate that the petitioner intended for rod ends and rod end bearings to be included as well. *See* AR (Pub.) Docs. 49, 451, 480.

The ITA's discretion concerning scope clarification at the investigatory stages is extensive. *See Mitsubishi*, 12 CIT at 1046–47, 700 F. Supp. at 555–56. In the case at bar, the ITA was well within its discretion when it found that rod ends and rod end bearings were included in the scope of the investigations. The record contains evidence in the petition and in Torrington's additional submissions which supports their inclusion. The Court finds, therefore, that the determination of the ITA to include rod ends and rod end bearings in these investigations is supported by substantial evidence and is otherwise in accordance with law.

CONCLUSION

The determination by the ITA that petitioner had standing to file an antidumping petition on behalf of the domestic industry which manufactures spherical plain bearings is in accordance with law and is affirmed. The decision to include rod ends and rod end bearings within the scope of the investigations also was in accordance with law and is affirmed.

(Slip Op. 92–6)

GENERAL HOUSEWARES CORP., PLAINTIFF *v.* UNITED STATES AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS

Court No. 87–01–00020

TROQUELES Y ESMALTES, S.A. AND CINSA, S.A., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 87–01–00022

OPINION

[Motions by the plaintiffs for judgment on the agency record and motions by the defendants for remand denied; actions dismissed.]

(Decided January 30, 1992)

Kilpatrick & Cody (*Joseph W. Dorn*, *Martin M. McNerney* and *Gregory C. Dorris*) for General Housewares Corp.

Brownstein Zeidman and Schomer (*Irwin P. Altschuler*, *David R. Amerine*, *Ronald M. Wisla* and *Jeff P. Manciagli*) for Troqueles y Esmaltes, S.A. and Cinsa, S.A.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*M. Martha Ries*); and Office of Chief Counsel for Import Administration, U.S. Department of Commerce (*Craig R. Giesse*), of counsel, for the defendants.

AQUILINO, *Judge*: These actions contest certain aspects of the *Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel*

Cooking Ware From Mexico, 51 Fed.Reg. 36,435 (Oct. 10, 1986), of the International Trade Administration ("ITA").[1]

I

The defendant has interposed a motion to dismiss part of action No. 87–01–00022 on the ground that publication of Porcelain-on-Steel Cooking Ware From Mexico; *Final Results of Antidumping Duty Administrative Review*, 55 Fed. Reg. 21,061 (May 22, 1990), has rendered the matter moot as to TRES.[2] That is, while challenge to the determination could result in revocation of the antidumping-duty order as to Cinsa, it could only reduce, not eliminate, the margin determined for TRES. As the final results of the administrative review govern assessment, the defendant argues, a recalculation of the original TRES margin would have no effect.

TRES and Cinsa recognize the point [3] but counter that they are challenging the validity of the underlying order:

> If the ITA remand determination were to exclude CINSA from the final affirmative LTFV determination, the Court would have the authority to remand the case to the Commission to redetermine whether Mexican imports excluding CINSA * * * were the cause of material injury to the domestic industry. Moreover, a remanded ITA determination as to TRES resulting in significantly reduced LTFV margins may also impact a Commission redetermination of injury. Accordingly, the Defendant is incorrect in asserting that TRES is merely seeking to adjust an irrelevant duty deposit rate. For TRES, the establishment of an accurate antidumping margin in the original investigation will impact a possible Commission redetermination as to whether TRES' imports caused material injury to the domestic industry. Thus, the controversy involving the foreign exchange rates used by the ITA in its final LTFV determination could very well determine the validity of the antidumping duty order as it applies to both CINSA and TRES.

Plaintiffs' Memorandum in Opposition to Defendant's Partial Motion to Dismiss, pp. 4–5, citing *Borlem S.A.-Empreedimentos Industriais v. United States*, 13 CIT 231, 710 F.Supp. 797 (1989).

In Borlem, the ITC had determined that the industry in question was threatened with material injury. That determination, however, was based on an ITA finding of sales at less than fair value, and judicial re-

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[1] In addition, the complaint filed in action No. 87–01–00022 on behalf of Troqueles y Esmaltes, S.A. ("TRES") and Cinsa, S.A., respondents in the administrative proceedings, prays for judicial review of the material-injury determinations of the International Trade Commission ("ITC") *sub nom. Porcelain-On-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan*, 51 Fed.Reg. 42,946 (Nov. 26, 1986). However, the later-filed Memorandum of Points and Authorities in Support of Plaintiffs' Rule 56.1 Motion for Judgment on the Agency Record ("TRES/Cinsa Memorandum") has dropped certain claims against the ITC, and their reply brief abandons remaining claims in the light of *Chaparral Steel Co. v. United States*, 901 F.2d 1097 (Fed.Cir. 1990), save a representation at page 3 thereof that a remand to the Commission might be necessary should their challenge to the ITA determination succeed.

[2] Intervenor-defendant General Housewares Corp. ("GHC"), the petitioner below, joins in the motion to dismiss. The court notes in passing that final results of a second administrative review have also been published, at 55 Fed.Reg. 39,186 (Sept. 25, 1990).

[3] *See, e.g.*, Plaintiffs' Memorandum in Opposition to Defendant's Partial Motion to Dismiss, pp. 2–3; TRES/Cinsa Memorandum, p. 4; TRES/Cinsa Reply Brief, p. 21. The quality of these and the other memoranda submitted has obviated any need for oral argument.

mand of that finding resulted in a *de minimis* margin for one of the two respondents. They thereupon sought remand to the Commission to reconsider its threat determination in light of its "long-standing practice of excluding from an *original* final injury determination import volume, pricing or other data for any firm excluded by Commerce from the scope of Commerce's *original* final determination." 13 CIT at 235, 710 F.Supp. at 800 (emphasis in original). The Court of International Trade granted remand, but the ITC then concluded that it had no authority to reconsider its original determination. On return to court, that conclusion was reversed. *Borlem S.A.-Empreedimentos Industriais v. United States*, 13 CIT 535, 718 F.Supp 41 (1989), *aff'd*, 913 F.2d 933 (Fed.Cir. 1990).

Relying on the *Borlem* decisions, the plaintiffs suggest that, if this court were to remand, and ITA recalculation were to result in the exclusion of Cinsa, remand to the Commission might be appropriate. Their suggestion is well-taken. Although publication of the results of a final administrative review generally renders actions based on prior determinations moot[4], where the validity of the order underlying that review, rather than the duty for dumping, is at issue, a party continues to be possessed of "a legally cognizable interest in the outcome." *Nuove Industrie Elettriche di Legnano S.p.A. v. United States*, 14 CIT ___, ___, 739 F.Supp. 1567, 1569 (1990), quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969). This is true of TRES, and defendant's motion to dismiss it from action No. 87–01–00022 must therefore be denied.

II

The issues in action No. 87–01–00022 concern a business practice of TRES and Cinsa (and apparently of other manufacturers and exporters in Mexico[5]) which grew out of that country's foreign-exchange-control laws. In December 1982, the government of Mexico established a system of dual exchange rates: the official, or controlled rate, which had to be used in all export and most import transactions, and a free rate, which, according to a memorandum in the record, was to be used for tourism and transactions along the border[6]. Every business exporting goods exceeding one million U.S. dollars in value was further required to bring underlying invoice(s) to a bank prior to export for issuance of a certificate for the sale of foreign exchange (*compromiso de ventas de divisas* or "CVD") indicating that that sale was subject to the exchange controls of Mexico and dollars earned on the sale had to be repatriated within 90

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[4] *See, e.g., McKechnie Bros. (N.Z.) Ltd. v. U.S. Dept of Commerce*, 14 CIT ___, 735 F.Supp. 1066 (1990); *Fabricas el Carmen, S.A. de C.V. v. United States*, 12 CIT 129, 680 F. Supp. 1577 (1988); *PPG Industries, Inc. v. United States*, 11 CIT 303, 660 F. Supp. 965 (1987).

[5] *See, e.g.*, TRES/Cinsa Memorandum, p. 6; Record Document ("R.Doc") 130.

[6] *See* R.Doc 114, Exhibit A, p. 27.

days of its issuance for exchange at the official rate.[7]

A

During ITA verification, TRES and Cinsa explained that their U.S. customers would deposit money due in interest-bearing accounts in the United States. Eventually, the monies would be converted by plaintiffs' Mexican banks at the official rates in effect 90 days after issuance of the CVD's, thereby liquidating them. *See* R.Doc 112, p. 23; R.Doc 118, p. 23. Because of depreciation of the peso vis-a-vis the dollar, this practice resulted in receipt by TRES and Cinsa of more pesos than would have been received had the sales proceeds been repatriated earlier. According to the verification reports, Cinsa allocated the gains on a per-sale basis, while TRES's allocation was based on an average calculation. *See* ConfDoc 30, pp. 23–24; ConfDoc 35, p. 24.

Initially, the gains were claimed as a credit-expense adjustment to U.S. price. *See, e.g.*, ConfDoc 2, pp. 12–13; R.Doc 30, pp. 18–19; R.Doc 31, p. 14. TRES and Cinsa then proposed three alternative methodologies for taking the gains into account: use of the free rate of exchange to convert as of the date of sale, use of the official rate on the 90th day, or a circumstances-of-sale adjustment pursuant to 19 C.F.R. § 353.15(a) (1986).

The ITA rejected a free-rate approach, stating that "[f]irms must convert their foreign exchange to Mexican pesos at the official exchange rate. Therefore, we converted at the certified official rate in effect on the date of sale." 51 Fed.Reg. at 36,440. Rejecting any other adjustment for the post-sales gains, the agency stated:

> While respondents may have received more pesos for their dollar earnings by waiting 90 days to repatriate those dollars, the purchasing power of those pesos would have been diminished by inflation that occurred in Mexico during that 90 day period. Therefore, if we were to allow these foreign exchange gains, without any adjustment for the diminishing purchasing power of the pesos, we would be overstating the return to the Mexican producers. Because changes in inflation and devaluation rates would, in general, be parallel, we would not anticipate the effect of the 90 day delay to be significant. Moreover, we verified that the change in the exchange rate was not predictable.

Id. at 36,438. Cinsa's margin was determined to be 17.47 percent; for TRES it was 58.73. *See id.* at 36,442.

Plaintiffs' position is that these margins are inflated as a result of the ITA's failure to discount their exchange gains.

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[7] *See* R.Doc 112, pp. 22–23; R.Doc 118, p. 23. According to papers filed with the ITA, however, the 90-day deadline merely fixed the rate of exchange as of the 90th day so that exporters exchanging after that day did not receive the benefit of any further devaluation of the peso. R.Doc 115, p. 61, n. 1; R.Doc 116, p. 51, n. 1. Moreover, it has now been reported that the government of Mexico has dropped this form of exchange control altogether. *See* 8 Int'l Trade Rep. (BNA) 1664 (Nov. 13, 1991).

B

As indicated, the agency made all currency conversions as of the dates of sale in accordance with 19 C.F.R. § 353.56(a), which stated:

> (a) *Rule for conversion.* In determining the existence and amount of any difference between the United States price and the fair value or foreign market value for the purposes of this part or of the Act, any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522 of the Tariff Act of 1930, as amended (31 U.S.C. 372):
>
> (1) As of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison * * *.[8]

The plaintiffs argue that the agency should have chosen the certified free rates rather than the controlled rates as of the dates of sale because the free rates more closely approximated the official rates 90 days later. They rely on *Pistachio Group of the Ass'n of Food Indus. v. United States*, 11 CIT 668, 671 F.Supp. 31 (1987), and *Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States*, 10 CIT 424, 640 F.Supp. 255 (1986), claiming that the ITA's reliance on section 353.56(a) was an abuse of discretion.

In *Pistachio Group*, the court remanded for agency determination of whether use of the rate certified by the Federal Reserve, the official Iranian government rate, artifically created a margin of dumping[9], having upheld section 353.56's delegation of authority to the Federal Reserve. The court concluded that

> the policies of the antidumping law require that ITA's residual discretion include the ability to avoid error in cases where the N.Y. Fed has chosen an incorrect exchange rate. Our Court of Appeals has recognized that findings of LTFV sales are not appropriate when they result solely from the mis-application of exchange rates. In *Melamine Chemicals*, the court upheld ITA's use of a 90-day lag rule for selecting exchange rates and stated:

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[8] This section has been renumbered 353.60(a). *See* 54 Fed. Reg. 12,742, 12,789 (March 28, 1989). Section 372, currently codified at 31 U.S.C. § 5151, states, in part:

> (c) Except as provided in this section, conversion of currency of a foreign country into United States currency for assessment and collection of duties on merchandise imported into the United States shall be made at values published by the Secretary under subsection (b) of this section for the quarter in which the merchandise is exported.
> (d) If the Secretary has not published a value for the quarter in which the merchandise is exported, or if the value published by the Secretary varies by at least 5 percent from a value measured by the buying rate at noon on the day the merchandise is exported, the conversion of the currency of the foreign country shall be made at a value—
>
> (1) equal to the buying rate at noon on the day the merchandise is exported; or
> (2) prescribed by regulation of the Secretary for the currency that is equal to the first buy-rate certified for that currency by the Federal Reserve Bank of New York under subsection (e) of this section in the quarter in which the merchandise is exported, but only if the buying rate at noon on the day the merchandise is exported varies less than 5 percent from the buying rate first certified.

In this matter, both the free rate and official Mexican controlled rate were certified. *See, e.g.*, R.Doc 115, p. 60; R.Doc 116, pp. 50–51. Because there was a variance of more than five percent, the ITA used daily rates to convert from pesos into dollars. *See* 51 Fed.Reg. at 36,437.

[9] The official rate was 90 rials to one U.S. dollar; the "free" rate 600–650. Both sides agreed that, had the ITA been able to verify that the latter rate had been used, "it would have been possible to conclude that artificial dumping margins were created by utilization of the official rate". *Pistachio Group of the Ass'n of Food Indus. v. United States*, 12 CIT 416, 417, 685 F.Supp. 848, 849 (1988).

> Though the CIT noted that the United States had cited "no authority for using a 90 day lag rule", that authority stems from *Commerce's duty to enforce fairly the antidumping laws by determining whether LTFV sales are or are not occurring*. The purpose of the antidumping law, as its name implies, is to discourage the practice of selling in the United States at LTFV by the imposition of appropriately increased duties. That purpose would be ill-served by application of a mechanical formula to find LTFV sales, and thus a violation of the antidumping laws, where none existed. A finding of LTFV sales based on a margin resulting solely from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair.

11 CIT at 676–77, 671 F. Supp. at 38 (emphasis in original, citations omitted). The court in *Luciano Pisoni* also remanded, stating that "the purpose of the antidumping laws would be violated if Commerce found a dumping margin based on the use of quarterly rates, while no margin would result if Commerce were to use the rates prevailing at the time of transactions." 10 CIT at 430, 640 F.Supp. at 260–61.

The defendant and the intervenor-defendant respond herein that plaintiffs' reliance on *Luciano Pisoni* and also on *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924 (Fed.Cir. 1984), is misplaced because those decisions were based on subsection (b) of 353.56, the exception to the general rule set forth in section 353.56(a). But as pointed out in *Pistachio Group* in response to an identical argument, "it would be shortsighted to confine the Court of Appeals' guidance to [subsection (b)] at issue in *Melamine*." 11 CIT at 677, 671 F. Supp. at 38:

> An improper exchange rate will distort an LTFV determination, regardless of whether it results from an error in calculation, or the selection of a valid rate from an improper period in time, or from the type of problems which may exist here. In any case, the agency must exercise its residual discretion to ensure that LTFV sales have actually been made.

Id. Cf. Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States, 10 CIT at 430, 640 F.Supp. at 260–61.

In this action, in the exercise of such discretion, the ITA applied daily rather than quarterly rates, relying on the numbers officially set by Mexico which, of course, governed TRES and Cinsa. *Cf.* R.Doc 112, pp. 22–23; R.Doc 114, Exhibit A, p. 27; R.Doc 118, pp. 20, 22, 23. And there is support in the record and in the law for this approach.

C

Alternatively, the plaintiffs at bar argue that the agency should have taken the increased peso returns into account by applying the official rates in effect 90 days after the dates of sale, citing 19 C.F.R § 353.56(b). The defendant counters that TRES and Cinsa never argued either that the peso's depreciation was rapid and therefore application of that subsection was appropriate or that use of the controlled rate on the 90th day was reasonable. Therefore, the defendant argues, the court cannot consider these issues.

An examination of the record, however, suggests that TRES and Cinsa did raise the points. For example, in their post-verification briefs, they requested selection of the "controlled rate of exchange with adjustment [to fair value] for the foreign exchange earnings, resulting from devaluation of the Mexican peso"[10], arguing that "failure to make the currency adjustment w[ould] result in a situation where the remaining margin was due *solely to the ITA's failure to take the currency exchange fluctuations into account*." R.Doc 115, p. 70 (emphasis in original). *See also id.* at 63–68, 69–75; R.Doc 116, pp. 53–58, 60–65. They also took the position that, if the ITA were to use the controlled rates, it should "grant an adjustment to fair value to properly reflect the actual rate of exchange". R.Doc 115, p. 60; R.Doc 116, p. 51. *Cf.* ConfDoc 47, p. 2, para. 5. While TRES and Cinsa did not explicitly state that conversion at the controlled rates 90 days after their sales pursuant to section 353.56(b) was required because of the peso's devaluation, they did request an adjustment if the agency were to rely on the controlled rates. In short, the plaintiffs are not barred from pursuing this issue now.

Section 353.56(b) of 19 C.F.R. stated at the time:

> *Special rules for fair value investigations.* For purposes of fair value investigations, manufacturers, exporters, and importers concerned will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. Where prices under consideration are affected by temporary exchange rate fluctuations, no differences between the prices being compared resulting solely from such exchange rate fluctuations will be taken into account in fair value investigations.

The decision of the Federal Circuit in *Melamine Chemicals, Inc. v. United States*, *supra*, reports ITA perception of the purpose and application of this section as follows:

> * * * Antidumping investigations are meant to determine whether prices of merchandise sold in the United States are at less than "fair value." When exchange rates are fluctuating substantially, a given dollar price of a product in the United States could change technically from fair to "unfair" literally from day to day, even if the foreign price of a product, denominated in the foreign currency, also remained constant. This result is not called for by the language or purpose of the Act. It would be unrealistic to expect businesses to change prices instantaneously to take account of fluctuating exchange rates. * * *
>
> The regulation, then, allows a reasonable period in which the business may take sustained exchange rate fluctuations into account. The regulation further instructs that temporary fluctuations should not be the sole basis for determinations of less than fair value sales. Businesses are to be given time to assess whether one

[10] R.Doc 115, p. 63; R.Doc 116, pp. 53–54.

> currency has truly appreciated against another before changing their pricing practices.

732 F.2d at 932, quoting 45 Fed.Reg. at 29,620.

In this action, the parties seem to agree that the peso was not undergoing temporary fluctuations during the period of investigation[11]. Rather, the peso's depreciation vis-a-vis the dollar appears to have been relatively steady. *See* R.Doc 76, Chart Two; Defendant's Memorandum, Exhibits A and B. *See also* R.Doc 130. In such a situation, the ITA has required a showing that some sort of adjustment has been made "to account for movement in the exchange rate." *E.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan*, 53 Fed.Reg. 12,552, 12,555 (April 15, 1988). See also *NTN Bearing Corp. of America v. United States*, 14 14 CIT at ____, ____, 747 F. Supp. 726, 734 (1990); *Toho Titanium Co. v. United States*, 14 CIT ____, ____, 743 F.Supp. 888, 892–93 (1990).

The plaintiffs claim that they are entitled to application of section 353.56(b) because they adjusted their home-market prices. But the record indicates that those prices were raised in response to the inflation rather than to account for the loss of value on the part of the peso. *See* ConfDoc 10, p. 4; ConfDoc 33, p. 76; ConfDoc 34, p. 66. While it might be prudent to increase prices in an inflationary market, to do so at a time when that market's currency is depreciating against another currency while keeping export prices constant tends to increase margins.

In any event, the plaintiffs have not established that the margins they contest herein were caused by factors beyond their control, and the court thus concludes that the ITA's reliance on subsection (a) rather than (b) of 19 C.F.R. § 353.56 is supported by substantial evidence on the record and in accordance with law.

D

That law requires the agency to make a "fair comparison" between foreign-market value and U.S. price. *E.g., Budd Company, Wheel & Brake Div. v. United States*, 14 CIT ____, ____, 746 F. Supp. 1093, 1099 (1990), citing *Smith-Corona Group, Consumer Products Div., SCM Corp. v. United States*, 713 F.2d 1568, 1578 (Fed.Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984). To facilitate that comparison, 19 U.S.C. §1677b(a)(4) authorizes an adjustment to foreign-market value in the "amount of any difference between the United States price and the foreign market value * * * wholly or partly due to * * * (B) other differences in circumstances of sale". The implementing regulation stated, in part:

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[11] *See, e.g.*, Plaintiffs' Memorandum, p. 25 ("exchange rate changes in the instant case were sustained rather than volatile"); Defendant's Memorandum, p. 7, n. 6; Intervenor-Defendant's Brief, P. 19.

The defendant argues that section 353.56(b) is only applied in cases of sustained appreciation. While it apparently is true that the ITA generally does not apply this section to depreciation, which tends to decrease margins, there is nothing in the statute, the regulation or their history which suggests such a limitation was intended. Conceivably, proper circumstances for the application of section 353.56(b) to depreciating currency can arise. *Cf. Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States*, 10 CIT 424, 640 F.Supp. 255 (1986). Hence, the court declines to interpret the law in such a manner now.

> In general. In comparing the United States price with the sales, or other criteria applicable, on which a determination of foreign market value is to be based, reasonable allowances will be made for bona fide differences in the circumstances of the sales compared to the extent that it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

19 C.F.R. § 353.15(a) (1986). Congress cautioned however:

> * * * [I]f adjustments are improperly made, the result may be an unjustifiable reduction in or elimination of the dumping margin. Therefore, * * * adjustments should be permitted if they are reasonably identifiable, quantifiable, and directly related to the sales under consideration and if there is clear and reasonable evidence of their existence and amount.

H.R. Rep. 317, 96th Cong., 1st Sess. 76 (1979). *Cf. Rhone Poulenc, S.A. v. United States*, 8 CIT 47, 65–66, 592 F.Supp. 1318, 1334–35 (1984).

TRES and Cinsa argued in support of adjustment that they were able to reduce their base U.S. prices by an amount equal to their exchange earnings because those earnings were predictable and quantifiable. *See, e.g.*, R. Doc 55, p. 4; 51 Fed.Reg. at 36,438. GHC responded that the Act and the regulations preclude such an adjustment, and that, even if not precluded by law, it would be inappropriate to make an adjustment in this matter. 51 Fed. Reg. at 36,438.

The ITA did not accept that those earnings were predictable, and the defendant now argues that unpredictable exchange gains could not have been factored into U.S. prices and therefore the plaintiffs cannot establish a link between such gains and pricing of the sales under consideration.[12]

The plaintiffs contend that verification of the amounts of increased revenue on each sale did establish such a link.[13] However, while they quantified, and the ITA verified, the amounts of the exchange-rate gains on a transaction-by-transaction basis, the plaintiffs also had to show that the differences between their home-market and U.S. prices were due wholly or partly to increased revenues on their U.S. sales – the "necessary causal link between the differences in price and differences

---

[12] The plaintiffs reply that the ITA "improperly denied the adjustment for failure to prove a difference in price *within* the export market, *e.g.*, a difference between Plaintiffs' original U.S. prices and such prices after a reduction to reflect the currency exchange gain." Plaintiffs' Reply Brief, p. 44 (emphasis in original). They claim that the "difference for which an adjustment is sought is a difference between the circumstance of sale between the home market and the export market." *Id.*

As the court construes defendant's position, however, what is pointed to is a failure by the plaintiffs to establish that the exchange-rate gains were a cause of the price differences, as required by 19 U.S.C. § 1677b(a)(4) and 19 C.F.R. § 353.15(a).

[13] They also contend that all argument beyond the ITA's conclusions regarding inflation amount to *post-hoc* rationalization. But the court finds that the agency's position on the predictability of exchange rates directly concerns the appropriateness of a circumstances-of-sale adjustment. Moreover, "where the court cannot find support in the record upon which ITA could allow this adjustment, further explanation from ITA would not be helpful." *Ipsco, Inc. v. United States*, 12 CIT 384, 397 n. 13, 687 F.Supp. 633, 643 n. 13 (1988).

in circumstances of sale"[14]—and that the increased revenues were directly related to the sales at issue. *See* 19 C.F.R. § 353.15(a).

On this point, the plaintiffs have not established that such revenues herein were directly reflective of their pricing strategy. At verification, they had been instructed to be

> prepared to show that the U.S. export prices on the products under investigation were reduced from their original amounts by the same amount as the exchange rate gain.
>
> Provide documentation (internal memos, calculation sheets, etc.,) showing all assumptions made in the setting of U.S. prices.

R.Doc 89, p. 8. Nonetheless, there is little in the record suggesting that TRES or Cinsa came forward with such information.[15]

They do contend that the "ITA has in numerous cases granted circumstance of sale adjustments when the respondent has quantified its increased revenue on sales in on market and tied such increased revenues to the sales of the subject merchandise." Plaintiffs' Memorandum, p. 38. They rely on *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 Fed.Reg. 18,992 (May 3, 1989); *Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value*, 51 Fed.Reg. 9069 (March 17, 1986), *aff'd sub nom. Sawhill Tubular Div. Cyclops Corp. v. United States*, 11 CIT 491, 666 F.Supp. 1550 (1987); and *Final Determination of Sales at Less Than Fair Value; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, 53 Fed. Reg. 24,755 (June 30, 1988).

Each of the referenced determinations, however, was based on a finding of "direct relationship". In *Antifriction Bearings*, the exporter requested an adjustment to "reflect the difference between * * * actual return on * * * U.S. sales and the theoretical return that results from using the Federal Reserve exchange rate on the date of sale." 54 Fed. Reg. at 19,085. The ITA granted relief for sales in 1987 per the following reasoning:

> To demonstrate that hedging has affected the actual exchange rate that it has received for its sales, a respondent must show the Department the actual exchange contracts that it entered into and demonstrate that these contracts are tied directly to the sales that took place during the period of investigation. In addition, the respondent must then accurately report the exchange rate that it received on these sales and include this information in its listing of individual sales and adjustments.[16]

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[14] *Brother Industries v. United States*, 3 CIT 125, 129–30, 540 F.Supp. 1341, 1349 (1982), *aff'd sub nom. Smith-Corona Group, Consumer Products Div., SCM Corp. v. United States*, 713 F.2d 1568 (Fed.Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984). *See also Rhone Poulenc, S.A. v. United States*, 8 CIT 47, 66, 592 F.Supp. 1318, 1334–35 (1984).

[15] In fact, the record indicates that the plaintiffs kept their U.S. prices constant during the period of investigation. *See* ConfDoc 2, App. C, pp. 20–21; ConfDoc 3, p. 2; ConfDoc 22, p. 14; ConfDoc 23, p. 13. *Cf.* R.Doc 112, p. 29; R.Doc 118, p. 24.

[16] Relief was denied for 1988 for failure to meet this test.

Similarly, in *Certain Welded Carbon Steel Pipe and Tube From India*, the ITA granted a circumstances-of-sale adjustment for revenues attributable to the International Price Reimbursement Scheme, a rebate equal to the difference between the cost of steel in India and its cost on the world market. *See* 51 Fed. Reg. at 9,090. The agency found the rebate "directly related to, and in fact contingent upon, the export sale of the merchandise under investigation. Receipt of the IPRS effectively enhanced the net return * * * on those sales." *Id.* at 9,091. Finally, in *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, the respondent received export bonds which it recorded as revenue. As the firm had no home-market sales during the period of investigation, the agency used third-country sales for the US-price-to-foreign-market-value comparison. *See* 53 Fed.Reg. at 24,757. This comparison required an adjustment for the difference in the value of the bonds received on U.S. sales and the value received on third-country sales, as "it is [Commerce's] consistent practice to adjust foreign market value for export payments that are directly related to the production and/or sale of the products under investigation, and which are recorded in the financial records of the exporter." *Id.* at 24,760.

The plaintiffs also rely on *Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order; Tubeless Steel Disc Wheels From Brazil*, 53 Fed.Reg. 34,566 (Sept. 7, 1988), stating that the "ITA's final determination was also inconsistent with the ITA's circumstance of sale adjustments to remedy potential problems in the LTFV calculations attributable to unique economic circumstances in the home market." In that proceeding, the ITA constructed foreign-market value on a monthly basis as of the date of shipment rather than the date of sale to account for Brazilian hyperinflation, comparing that value with U.S. price on the date of sale. Currency conversions were made as of that date. Because of the rapid devaluation of the cruzeiro and the fact that sales occurred more than a month before dates of shipment, the agency adjusted foreign-market value to eliminate "artificial distortion of value" but limited the adjustment to "cases where the foreign market value is based upon monthly constructed values because of hyperinflation during the period of investigation and the date of sale occurs in a calendar month preceding the date of exportation." *Id.* In affirming, the Court of International Trade stated that

> it was appropriate for Commerce to choose to effectuate the primary statutory purpose in favor of fair determinations based on contemporaneous comparisons. It would appear that were Commerce to do otherwise, dumping margins would result solely from the application of exchange rates, a circumstance which was wholly beyond the control of the exporters, an unacceptable outcome.

Budd Company, Wheel & Brake Div. v. United States.[17] The court held that it was the agency's construction of foreign-market value and the Brazilian economy which created the distortion of value therein. *See* 14 CIT at ___, 746 F.Supp. at 1102.

The record before this court does not indicate inflation of the kind apparently afflicting Brazil. TRES referred to a rate of 30.31 percent during the period of investigation and 63.70 for all of 1985. *See* R.Doc 31, p. 11. The verification report on that company referred to a rate of 3.5 percent for July. *See* ConfDoc 35, p. 28. A U.S. State Department financial attache confirmed that number for July and 4.4 percent in August and 4.0 for September. *See* R.Doc 114, Exhibit A, p. 12. TRES and Cinsa claimed after verification that the rate was more than 43 percent during the period of investigation[18], while the ITC's preliminary determination had stated that "Mexico's higher inflation rate relative to that in the United States offset the impact of depreciating nominal exchange rates during most of the period." R.Doc 12, p. A-24. *See also* R.Doc 133, p. A-26. Whatever the actual rate, the defendant argues that a higher number would only serve to increase plaintiffs' exchange-rate loss. *See* Defendant's Memorandum, pp. 45–47.

The plaintiffs counter that "circumstances of sale adjustments have been granted in numerous instances and the amount of the adjustment has never before been 'offset' by an amount corresponding to the rate of inflation." Plaintiffs' Reply Brief, p. 38. However, the ITA has broad discretion in making adjustments to foreign-market value under 19 U.S.C. § 1677b(a)(4)(B) and 19 C.F.R. § 353.15 (1986). *See, e.g., Smith-Corona Group, Consumer Products Div., SCM Corp. v. United States*, 713 F.2d at 1575; *Budd Company, Wheel & Brake Div. v. United States*, 14 CIT at ____, 746 F.Supp. at 1103; *Rhone Poulenc, S.A. v. United States*, 8 CIT at 65, 592 F.Supp. at 1334. And the court may not weigh the evidence concerning specific factual findings, nor may it substitute its judgment for that of the agency.

Suffice it to state that, on the record at bar, the court is not persuaded that the agency's denial of a circumstances-of-sale adjustment was either unsupported by substantial evidence or not in accordance with law.

III

The defendant does acquiesce in remand of Count 7 of the complaint filed by TRES and Cinsa, which challenges the ITA's denial of such an adjustment for related-party commission expenses, "to re-examine the issue in light of recent administrative determinations by the agency."

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[17] 14 CIT at ____, 746 F.Supp. at 1100 (citations omitted). The court distinguished *Negev Phosphates, Ltd. v. United States*, 12 CIT 1074, 699 F.Supp. 938 (1988), and *LMI-La Metalli Industriale, S.p.A. v. United States*, 13 CIT 305, 712 F.Supp. 959 (1989), *aff'd in part, rev'd in part*, 912 F.2d 455 (Fed. Cir. 1990). In *Negev*, the Israeli government granted rebates for "differences in exchange rates vis a vis inflation". The plaintiffs challenged the ITA's finding that additional revenues received as a result of that subsidy were not directly related expenses under section 353.15. The court concluded that the agency's denial was a reasonable exercise of its discretion:

> * * * [T]he EIS receipts do not account for any difference in the prices of the sales that Commerce compared. The price that Negev charged its United States and home market purchasers for its product was not affected by the EIS payments. Negev simply received a rebate payment of purchase price from its government after the date of payment by the United States purchaser.

12 CIT at 1080, 699 F.Supp. at 945. In *LMI*, an adjustment to account for currency hedging expenses related to purchase of raw materials had been denied because they could not be "directly tied to the sales under investigation". *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy*, 52 Fed. Reg. 816, 818 (Jan. 9, 1987).

[18] *See* R.Doc 115, p. 77; R.Doc 116, p. 67.

Defendant's Memorandum, p. 2. Nevertheless, such determinations by the ITA, covering TRES and Cinsa, have made this count moot.

The defendants have also filed a motion to remand GHC's action, No. 87–01–00020, stating that they have determined that they "did not follow the proper practice during the investigation with respect to the manner in which Commerce calculated foreign market value." However, this court must consider *sua sponte* whether or not that action has become moot if it is to function within its constitutional sphere of authority. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). GHC states in the first paragraph of its complaint that the "portions of the administrative determination which [it] seeks to reverse had the effect of lowering the final dumping margins determined by the ITA." GHC's subsequent motion for judgment on the agency record further narrows its challenge of the ITA's determination to use only of home-market sales to wholesalers in the agency's contemplation of the foreign-market value and to a conclusion that Cinsa's home-market sales of roasters were insufficient in that context. In short, GHC's action is one wherein "the relief sought, and the issues raised thereby, are tied inextricably to duties on particular entries." *Nuove Industrie Elettriche di Legnano S.p.A. v. United States*, 14 CIT at ___, 739 F. Supp. at 1570. That is, the later administrative-review results have mooted entitlement to that relief, and action No. 87–01–00020 thus must be dismissed.

Judgments will enter accordingly in both actions covered by this opinion.

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSE
C92/8 1/24/92 Restani, J.	Domtar, Inc.	91–6–00416	4802.52.10.00 Various rat

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U.S. COURT OF INTERNATIONAL TRADE,
OFFICE OF THE CLERK,
New York, NY, January 29, 1992.

NOTICE

On January 29, 1992, the United States Court of International Trade authorized the publication for public comment of proposed Revised Rules Governing Complaints of Judicial Misconduct and Disability.

This notice is given to provide an opportunity for public comment upon the proposed Revised Rules.

Any person interested in receiving the proposed Revised Rules may obtain a copy of them by submitting a request in writing by the close of business on Friday, February 28, 1992. Any comments shall be in writing and shall be submitted by the close of business on Tuesday, March 31, 1992.

All requests and comments shall be sent to:

Joseph E. Lombardi
Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, NY 10007

All comments received will be forwarded to the court for its consideration.

JOSEPH E. LOMBARDI,
Clerk of the Court.

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